

09/528,466

Testimony

DOCUMENT A
(Paper # 4)

SHEET 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MANHATTAN SOFTWARE, INC., A
CALIFORNIA CORPORATION, AND
STEVEN R. MITCHELL, AN
INDIVIDUAL,

PLAINTIFFS,

VS.

CASE NO. 230 326

JEAN KASEM, AN INDIVIDUAL,
AND LITTLE MISS LIBERTY
ROUND CRIB COMPANY, INC., A
CALIFORNIA CORPORATION, AND
LITTLE MISS LIBERTY BEVERLY
HILLS, A CALIFORNIA
CORPORATION, AND LITTLE MISS
LIBERTY ROUND CRIB COMPANY,
A TEXAS CORPORATION, AND
DOES 1 THROUGH 50, INCLUSIVE,

DEFENDANTS.

C O N F I D E N T I A L

(PURSUANT TO AGREEMENT, THIS TRANSCRIPT
HAS BEEN DESIGNATED CONFIDENTIAL)

DEPOSITION OF RUSSELL LESSER, TAKEN
ON BEHALF OF THE DEFENDANTS AT 16255
VENTURA BOULEVARD, SUITE 600, ENCINO,
CALIFORNIA, COMMENCING AT 10:00 A.M.,
MONDAY, AUGUST 13, 2001, BEFORE
TRACY MARIE FOX, RPR, CSR 10449.

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I N D E X

| | | | |
|----|------------------------------|--|-------|
| 1 | DEPONENT: | EXAMINED BY: | PAGE: |
| 4 | RUSSELL LESSER | MR. LOEB | 7 |
| 8 | EXHIBITS FOR IDENTIFICATION: | | |
| 9 | DEFENDANTS': | | |
| 10 | 145 - | ONE-PAGE DOCUMENT ENTITLED: "LIMITED LIABILITY COMPANY ARTICLES OF ORGANIZATION" | 50 |
| 11 | 146 - | ONE-PAGE DOCUMENT ENTITLED: "LIMITED LIABILITY COMPANY - STATEMENT OF INFORMATION" | 52 |
| 12 | 147 - | A DOCUMENT ENTITLED: "OPERATING AGREEMENT OF M.W.R.C. INTERNET SALES, L.L.C." | 53 |
| 13 | 148 - | DOCUMENT ENTITLED: "NONDISCLOSURE AGREEMENT" | 57 |
| 14 | 149 - | DOCUMENT ENTITLED: "SOFTWARE DEVELOPMENT CONTRACT" | 64 |

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1 APPEARANCES OF COUNSEL:

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I N D E X (CONTINUED):

| | | | |
|---|------------------------------|--|-----|
| 3 | EXHIBITS FOR IDENTIFICATION: | | |
| 4 | DEFENDANTS': | | |
| 5 | 150 - | DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT" | 75 |
| 6 | 151 - | DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT" | 80 |
| 7 | 152 - | DOCUMENT ENTITLED: "DIVE N' SURF, INC., VENDOR QUICK REPORT" | 83 |
| 8 | 153 - | ONE-PAGE LETTER DATED MS. MEISELS TO MR. LOEB DATED APRIL 30TH, 2001 | 85 |
| 9 | 154 - | DOCUMENT LOG | 111 |

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SHEET 3

1 A. I DON'T REMEMBER EXACTLY. WHATEVER THE
2 CHECK RECORD SHOWS. YOU CAN SEE WHEN THE CHECKS
3 WERE WRITTEN. I CAN'T REMEMBER THE EXACT DATE.
4 Q. ARE YOU FAMILIAR WITH SOMETHING CALLED
5 "PURCHASE COORDINATOR"?
6 A. YES.
7 Q. WHEN'S THE FIRST TIME YOU HEARD PURCHASE
8 COORDINATOR?
9 MR. CONNER: OBJECTION; VAGUE.
10 THE DEPONENT: WELL, HEARD ABOUT IT OR THE
11 CONCEPT? I DON'T KNOW WHAT YOU MEAN.
12 BY MR. LOEB:
13 Q. THE CONCEPT.
14 A. '97.
15 Q. AND THAT WAS SOMETHING THAT MR. MITCHELL
16 TOLD YOU AT THAT TIME?
17 A. HE -- WE TALKED IN GENERAL TERMS ABOUT
18 HOW I HAD THIS CONCERN ABOUT HOW THESE E-COMMERCE
19 SYSTEMS COULD POSSIBLY WORK, BECAUSE THEY WEREN'T
20 MAKING ANY MONEY. AND THIS WAS NOT THE WAY I WAS
21 TAUGHT IT WORKED IN SCHOOL
22 AND HE SAID HE WAS -- AN IDEA THAT COULD
23 WORK, AND IT WAS VERY GENERAL. I DON'T THINK THE
24 WORD "PURCHASE COORDINATOR" CAME UP AT THAT TIME.
25 BUT THE CONCEPT WAS DISCUSSED.

18

1 HAS SO FAR DESIGNATED THE ENTIRE TRANSCRIPT
2 CONFIDENTIAL.
3 THE DEPONENT: THAT'S FINE. BUT THIS IS
4 STUFF I'VE SPENT MONEY ON, AND I'M NOT -- I DON'T
5 FEEL FREE TO JUST TELL ANYBODY. SO...
6 MS. MEISELS: AND YOU DIDN'T AGREE THAT IT
7 WAS CONFIDENTIAL. AND EVEN CONFIDENTIAL OR NOT,
8 WE'RE STILL NOT GOING TO GET INTO ANY TRADE SECRET
9 OR PRIVILEGED INFORMATION AS WE DISCUSSED, SO...
10 MR. LOEB: UH-HUH.
11 CAN YOU READ BACK FOR ME THE LAST
12 QUESTION BEFORE THE WHOLE COLLOQUY TOOK PLACE.
13 (THE RECORD WAS READ AS FOLLOWS:
14 Q. WHAT WERE THE CONCERNS YOU HAD?)
15 THE DEPONENT: I SAID THAT MOST OF THE
16 E-COMMERCE SYSTEMS I HAD SEEN WERE NOT FINANCIALLY
17 VIABLE, I DIDN'T THINK.
18 MS. MEISELS: THAT WAS NOT THE QUESTION
19 THAT HE RESPONDED "YES" TO. I DON'T KNOW IF IT'S
20 BECAUSE WE WENT TO AN INCORRECT PLACE.
21 BUT IF I MIGHT PARAPHRASE SOMETHING ABOUT
22 DID MR. MITCHELL SPECIFICALLY ADDRESS YOUR CONCERNS
23 AND TELL YOU WAYS HE THOUGHT THE SYSTEM COULD MAKE
24 MONEY?
25 THAT'S THE QUESTION TO WHICH MR. LESSER

20

1 Q. WHAT DO YOU RECALL MR. MITCHELL TELLING YOU
2 AT THAT TIME?
3 A. HE HAD A SYSTEM HE WAS WORKING ON -- HE HAD
4 A SYSTEM HE WAS WORKING ON --
5 Q. AND NOTHING --
6 A. -- WHERE E-COMMERCE -- THAT WOULD SOLVE THE
7 CONCERNS I HAD.
8 Q. WHAT WERE THE CONCERNS YOU HAD?
9 A. THEY WEREN'T MAKING ANY MONEY. THEY WERE
10 UNPROFITABLE. I COULDN'T UNDERSTAND HOW THEY COULD
11 KEEP MAKING MONEY. AND IT TURNS OUT, I GUESS, I WAS
12 RIGHT. THEY DIDN'T, SO -- MOST OF THEM.
13 Q. AT THAT TIME IN 1997, DID MR. MITCHELL
14 TELL YOU HOW HE THOUGHT HIS CONCEPT WOULD BE ABLE
15 TO ALLOW MONEY TO BE MADE FROM E-COMMERCE?
16 A. WELL, I'M -- ARE WE GETTING INTO A TRADE
17 SECRET THAT WE'RE WORKING ON?
18 MS. MEISELS: WE'RE GETTING THERE, BUT I'M
19 WAITING FOR HIM TO CROSS THE LINE.
20 THE DEPONENT: WELL, I THINK THAT HE'S
21 CROSSED THE LINE.
22 MS. MEISELS: IT'S JUST A "YES" OR "NO"
23 QUESTION. YOU DON'T HAVE TO GIVE HIM ANY DETAIL.
24 THE DEPONENT: YES.
25 MR. LOEB: WHAT ALSO MR. CONNER REMEMBERS

19

1 RESPONDED "YES." AND THAT'S WHY I ALLOWED HIM TO
2 ANSWER, BECAUSE IT WAS A "YES" OR "NO," AND DID NOT
3 GO INTO THE DETAILS OF THE SYSTEM.
4 BY MR. LOEB:
5 Q. WHAT DID MR. MITCHELL TELL YOU ABOUT THE
6 SYSTEM IN 1997?
7 A. ISN'T THAT THE SAME QUESTION IN A DIFFERENT
8 WEIGHT?
9 Q. NO.
10 I'M ASKING YOU WHAT HE TOLD YOU.
11 A. I'M SAYING THAT HE TOLD ME THAT HE HAD A
12 SYSTEM THAT SOLVED MY CONCERNS.
13 Q. AND YOU DON'T RECALL HIM TELLING YOU
14 ANYTHING MORE THAN THAT?
15 A. I DON'T REMEMBER THE SPECIFIC DETAILS.
16 Q. IN GENERAL, DO YOU REMEMBER ANYTHING
17 FURTHER?
18 A. THIS WAS A COCKTAIL PARTY IN THE 1997 AT
19 THE DICKENS' DINNER AT THE BILTMORE HOTEL
20 Q. WHAT'S THE NEXT CONTACT THAT YOU HAD
21 WITH MR. MITCHELL ABOUT THIS CONCEPT THAT HE HAD
22 FOR E-COMMERCE?
23 A. LET'S SEE, PROBABLY -- I DON'T REMEMBER
24 EXACTLY. I BELIEVE IT WAS ABOUT -- AFTER HE CEASED
25 THE WORKING WITH JEAN KASEM. SO -- IT WAS AFTER WE

21